

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

XENOS, INC., a Nebraska corporation; and  
OTTILIA CHAPMAN, an individual;

Plaintiffs,

vs.

TILLY'S, INC., a Delaware corporation;

Defendant.

**8:13CV202**

**FINDINGS AND  
RECOMMENDATION**

Plaintiffs initiated this action in the District Court for Douglas County, Nebraska on May 29, 2013. The complaint was served on the defendant on June 3, 2013. It was removed to this forum on July 3, 2013.

The plaintiffs are citizens of Nebraska; the defendant is a citizen of Delaware with its principal place of business in California. The plaintiffs seek injunctive relief and damages. The defendant's notice of removal alleges the amount in controversy exceeds \$75,000.

The plaintiffs have moved for remand to the state court. (Filing No. 7). The motion for remand does not challenge defendant's assessment of the amount in controversy. Rather, Plaintiffs allege the removal notice was untimely filed and was filed by World of Jeans and Tops, Inc., which is not a party to this action.

A defendant seeking removal must file a "notice of removal . . . within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading. . . ." 28 U.S.C. § 1446(b)(1). Based on the parties' submissions and the evidence of record, the defendant was served on June 3, 2013. June has 30 days. The notice of removal was filed on July 3, 2013, thirty days following service of the complaint upon the defendant. The notice of removal was timely filed.

The notice of removal begins with the following statement:

Defendant, Tilly's, Inc., respectfully gives notice of removal of this case to the United States District Court for the District of Nebraska pursuant to 28 U.S.C. §§ 1332 & 1446.

(Filing No. 1). Although signed by counsel for "World of Jeans and Tops, Inc. d/b/a Tilly's, Inc.," the removal notice was clearly filed on behalf of the named defendant, Tilly's, Inc.

This court has federal subject matter jurisdiction, and there is no merit to the plaintiffs' claims that the removal notice was procedurally defective.

Accordingly,

IT IS RECOMMENDED to the Honorable John M. Gerrard, United States District Judge, pursuant to [28 U.S.C. § 636\(b\)](#), that the plaintiffs' objection to notice of removal and motion for remand, (Filing No. 7), be denied.

The parties are notified that failing to file an objection to this recommendation as provided in the local rules of this court may be held to be a waiver of any right to appeal the court's adoption of the recommendation.

July 18, 2013.

BY THE COURT:

s/ Cheryl R. Zwart  
United States Magistrate Judge